92-608

No._____

Supreme Court, U.S.
FILED
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In The

SUPREME COURT of the UNITED STATES

October Term 1992

ROBERT J. STANDRING

Petitioner, Pro Se

vs.

XEROX CORPORATION

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

Robert J. Standring
757 Front Street
Berea, Ohio 44017
216 / 234-6118

QUESTION PRESENTED

Whether **Ohio Civil Rule 38** or any other statute has abolished Petitioner's rights to a trial by jury otherwise guaranteed under the **Seventh Amendment**?

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petitioner, Robert J. Standring, respectfully prays that a writ of certiorari issue to review **Ohio Civil Rule 38**, as well as the opinions of the Eighth District Court of Appeals and The Supreme Court of Ohio to determine whether Petitioner's right to trial by jury under the **Seventh Amendment** of the US Constitution has been violated.

Petitioner's appeal is based upon the trial court's use of and the Eighth District Court's interpretation of **Ohio Civil Rule 38(C)** to obviate Petitioner's **Seventh Amendment** rights. Such constitutional law materially departs from established precedents.

OPINIONS BELOW

The written opinion of the Eighth District Court of Appeals is reported as *Xerox Corp v. Standring*, Appellate Case No, 60426, and appears in Appendix A. The opinion of The Supreme Court of Ohio, Case No. 92-1075, appears in Appendix B.

JURISDICTION

The Eighth District's opinion in this matter was journalized on May 11, 1992. Timely notice of appeal and memorandum was filed with the Supreme Court of Ohio on June 1, 1992, and denied on September 23, 1992. Whereas Petitioner, having exhausted these options, The US Supreme Court's jurisdiction is invoked under Title 28, USC § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The **Seventh Amendment** to the US Constitution is set forth in Appendix C, and Ohio **Civil Rule 38** with Case Note, it is set forth in Appendix D.

STATEMENT OF CASE

Respondent, *Xerox Corporation*, sought to recover money damages for $13,044 from Petitioner, *Robert Standring*. Petitioner instanter responded with an Affirmative Defense, a jury request and counterclaim, along with a motion to suppress Respondent's tainted Exhibit "A" for being an uttered forgery.[1]

Petitioner's jury request was placed on the court's docket. During the Case Management Conference, however, the trial judge ruled that a jury trial would *not be*

[1]Each of these issues of fact (***including the jury request***) was timely raised on May 25, 1990. It should be noted that the case was *not separated* until *after the start of trial* upon the trial judge's own motion. Respondent's use of a forgery is a triable issue of *fact* for which the jury demand was made.

allowed under any circumstances.[2] As a result of the trial judge's decision not to allow a trial by jury, Petitioner filed a writ of mandamus on August 10, 1990 with the Eighth District Court to force the jury issue. Said writ was summarily denied.

On the afternoon of Friday, August 17, 1990, the case was secretly moved forward three days to 9 AM Monday morning, August 20. At time of the *ad hoc* trial, it was learned that this judicial machination was secretly orchestrated by both the trial judge and Respondent to obviate Petitioner's seven subpoenas and cover up the forgery issue.

According to the official trial transcript, Petitioner voiced a strong protest in his opening statement for not being allowed to have a trial by jury[3].

The trial judge proceeded with the case as a trial to the court,[4] citing **Civil Rule 38(B)** as the basis for

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[2] Without merit, the trial judge also cited the Thirteenth Amendment as the basis for disallowing Petitioner's request.

[3]Petitioner's opining statement was: "*I am here under protest without (benefit of) jury.*" (Trial Transcript p.11, lines 21-22.)

[4]Once again, the trial judge cited the Thirteenth Amendment (Trial Transcript p. 88, line 9)

disallowing a jury trial. To reinforce the trial judge's position, he added, "*Not every issue is triable to a jury, even if you* (Petitioner) *demanded the jury in the proper way.*" (Trial Transcript pp. 6-7).

In other words, at the instanter of trial, the judge's statement clearly demonstrated that the trial judge had no intention of observing the **Seventh Amendment**, *not even if properly invoked.*

During the lunch hour, the trial judge returned to the courtroom, out of judicial robe, and initiated an altercation with Petitioner for repeatedly demanding a trial by jury.

It should be noted that at no time, either before or during trial, did the Petitioner consent or agree to waiver of Petitioner's constitutional right to trial by jury.

In total, Petitioner made *seven separate attempts* to obtain a jury trial—*all of which were judicially defeated.*[5]

After Petitioner requested that judicial notice be taken on the jury request, the trial judge instructed the court reporter to remove Petitioner's request for judicial notice,

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[5]It should be noted that Petitioner challenged the trial judge's jurisdiction 33 days before the commencement of trial, and to have the case reassigned to another judge who *would allow a trial by jury.*

before instructing the bailiff to "round up" potential jurors to hear the counterclaim only. Prior to impaneling the jury, however, the trial judge first *pre-tried* the case personally. After warning Petitioner *not to reference Respondent's forgery*, the trial judge then conducted *voir dire*.

The moment the jury heard damaging testimony pertaining to Respondent's forgery—*the door to which Respondent opened*—the trial judge recessed the trial. The trial judge used this opportunity to solicit Respondent to make a pre-arranged motion for a directed verdict so that the case could be dismissed.

The trial judge granted Respondent's motion, and the jury was ever brought back to the courtroom nor discharged.

After the *ad hoc* trial was concluded on August 21, 1990, the judge then proceeded to prepare a false Journal Entry and provided the Clerk of Courts with false information so that it would appear *as if* a jury had rendered a decision three days later on August 24, 1990. (*Court Docket entry 000040*)

Petitioner served timely notice of appeal to the

Eighth District Court of Appeals on seven separate Assignments of Error. The first material error raised was Petitioner's rights to trial by jury under the **Seventh Amendment**.

Upon receiving notice of appeal, the judge's bailiff used the court's computer system to alter the court's docket on Sunday, September 30, 1990 to make it appear as if a trial by jury had been conducted.

The Court of Appeals affirmed the trial court's decision to deny a trial by jury, citing **Civ. R. 38(C)** as the basis for forfeiture of Petitioner's **Seventh Amendment** rights.

Petitioner took exception to this opinion and appealed to The Supreme Court of Ohio, raising four separate Propositions of Law.[6] The first proposition being the **Seventh Amendment**.

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[6]The first proposition of law read:

I. Can a trial judge arbitrarily obviate constitutional rights of the **Seventh Amendment**?

REASON FOR GRANTING PETITION

A writ of certiorari should issue because Petitioner's rights to a trial by jury under the **Seventh Amendment** have been unlawfully abridged. The lower courts' opinions substantially depart from the US Constitution as to warrant review by The US Supreme Court.

CONCLUSION

In unambiguous terms, the US Constitution, under the **Seventh Amendment** clearly states that "*the right to trial by jury shall be preserved.*"

In equally unambiguous terms, the Case Note states that "... *the amendment of Civ. R. 38(B) was to help assure that a jury demand not be overlooked.*"

Petitioner states that he is unable to locate or identify any credulous authority, common law statute or written precedent that demonstrates where **Civil Rule 38(B)** or **(C)** abolished Petitioner's rights to trial by jury.

In so far as the Eighth District Court of Appeals has expressly raised **Ohio Civil Rule 38(C)** as the basis for

denying Petitioner's right to trial by jury, Petitioner seeks to have the spirit as well as the intention of the rule reviewed, keeping in mind that this was an *ad hoc* trial, and that the case was not separated until the start of that trial for dubious and ulterior motives.

WHEREAS Petitioner believes that his rights to a proper jury trial have been violated, Petitioner seeks to have the US Supreme Court reverse and remand the case back to the lower court so that the *unlawfully obviated subpoenas* may take affect and the case be properly tried by a lawfully impaneled jury to pass on all issues of fact—*including Respondent's used of an uttered forgery.*[7]

Respectfully submitted,

ROBERT J. STANDRING
Petitioner, *Pro Se*
757 Front Street
Berea, Ohio 44017-1608
(216) 234-6118

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[7]It should also be noted by the Court that on July 12, 1990, the trial judge expressly denied Petitioner's motion for Discovery (*Court Docket entry 000012*). As a result of that decision, Respondent has refused to tender the original instrument. The reason for this is obvious: Respondent's Exhibit "A" is an uttered forgery.

APPENDIX A

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 60426

ROBERT STANDRING	:	
	:	
Plaintiff-appellant	:	
	:	JOURNAL ENTRY
-vs-	:	AND
	:	OPINION
XEROX CORPORATION	:	
	:	
Defendant-appellee	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	APRIL 30, 1992
	:	
CHARACTER OF PROCEEDING	:	Civil appeal from Court of Common Pleas Case No. 186651
JUDGMENT	:	AFFIRMED
	:	
DATE OF JOURNALIZATION		MAY 11, 1992

APPEARANCES:

For plaintiff-appellant:	For defendant-appellee:
Robert Standring 757 Front Street Berea, OH 44017	Leonard S. Greenwald, Esq 815 Superior Avenue Cleveland, OH 44114

PATTON, J.

On March 19, 1990, plaintiff-appellee, Xerox Corporation, filed suit against defendant-appellant, Robert Standring, to collect payment on a commercial installment purchase agreement. Appellant, proceeding pro se, filed a "Response with Motion To Suppress Plaintiff's Exhibit "A" and attached Counterclaim for Money Damages."[1] At page five of appellant's response appeared the following caption, "Counterclaim for Money Damages with Jury Demand."

On June 21, 1990, appellant filed a motion for discovery and to compel production of documents. Therein appellant certified that on June 18, 1990, service of the motion for discovery was made to appellee's attorney. On July 16, 1990, the trial court denied appellant's motion. On July 20, 1990, appellant filed a motion to compel the deposition of Frank Pacetta, which was denied by the trial court on August 6, 1990.

The case proceeded to trial on August 20, 1990. The trial court, on its own motion, severed the complaint from the counter-claim for trial. The complaint was tried to the court and the counterclaim proceeded before a jury.

Following trial on the complaint, the court entered a verdict in favor of the appellee in the amount of $13,043.81 plus interest from November 1, 1989 and costs. Subsequently, a jury was impaneled for hearing the appellant's counterclaim. At the close of appellant's evidence appellee moved for a directed verdict which was granted by the trial court. The instant appeal followed.

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[1] Plaintiff's Exhibit "A: was a copy of the installment purchase agreement signed by the appellant. *(NOTE: No reference is made to the fact that said Exhibit "A" was properly challenged as an uttered forgery on May 25, 1990, Court Docket.)*

Appellant's first assignment of error provides:

I. THE TRIAL COURT MATERIALLY AND JUDICIALLY ERRED IN DISALLOWING A JURY TRIAL TO HEAR APPELLANT'S AFFIRMATIVE DEFENSE.

Appellant argues the trial court erred by not allowing all the issues to be tried by a jury. Appellant's argument lacks merit.

Civ. R. 38(C) provides:

> (C) Specification of issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within fourteen days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

Pursuant to Civ. R. 38 the right to trial by jury is waived absent a party's proper demand. Cincinnati Ins. Co. v. Gray (1982), 7 Ohio App. 3d 374. Under Civ. R. 38(C), a party may specify the issues he wishes to be tried by a jury.

In the instant case the appellant's response to appellee's complaint contained the following jury demand: "Counterclaim for Money Damages with Jury Demand." Review of the record reveals that the appellant demanded trial by jury for only some of the issues. Specifically, he

only demanded trial by jury for his counterclaim. We thus conclude the appellant waived his right to a jury trial on all the issues except for those specifically involving his counterclaim. Civ. R. 38; Cincinnati Ins. Co., supra.

___ . . .[§]

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

RECEIVED FOR FILING
APR 30 1992

DYKE, P. J. (left blank)

ANN McMANNOMAN, J. CONCUR

/s/ John T. Patton
JUDGE
JOHN T. PATTON

JOURNALIZED MAY 11 1992
GERALD E. FUERST, Clerk of Courts
By /s/ *Candace M. Fischer* Deputy

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§ In total, the appellate court's opinion runs 15 full pages. In the interest of brevity, and *because this is the only issue* for which a writ of certiorari is being sought, the balance of unrelated opinions have not included.

APPENDIX B

The Supreme Court of Ohio

1992 TERM

To wit: September 23, 1992

Robert Standring, Appellant,	:	Case No. 92-1075
v.	:	ENTRY
Xerox Corporation, Appellee.	:	

Upon consideration of the motion for an order directing the Court of Appeals for Cuyahoga County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists herein.

COSTS:

Motion Fee, $40.00, paid by Robert J. Standring.

(Court of Appeals No. 60426)

/s/ *Thomas J. Moyer*

THOMAS J. MOYER
Chief Justice

APPENDIX C.

The Seventh Amendment to the US Constitution reads as follows:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

APPENDIX D.

Ohio Civil Rule 38. Jury trial of right

(B) Demand. Any part may demand a trial by jury on any issue triable of right by a jury by serving upon the other parties a demand therefor at any time after the commencement of the action and not later than fourteen days after the service of the last pleading directed to such issue. Such demand shall be in writing and may be endorsed upon a pleading of the party. If the demand is endorsed upon a pleading the caption of the pleading shall state "Jury Demand Endorsed Hereon." In an action for appropriation of a right of way brought by a corporation pursuant to Article XIII, Section 5, of the Ohio Constitution, the jury shall be composed of twelve members unless the demand specifies a lesser number; and in the event of timely demand by more than one party in such action the jury shall be composed of the greater number not to exceed twelve. In all other civil actions the jury shall be composed of eight members unless the demand specifies a lesser number; and in the event of timely demand by more than one party in such actions the jury shall be composed of the greater number not to exceed eight.

(C) Specification of issues. In his demand a party may specify the issues which he wishes to be tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within fourteen days after service of the demand or such lesser time as the court may order, may serve demand for trial by jury of any other or all of the issues of fact in the action.

RULE 38. Jury trial of right

OHIO CASE NOTE

Relevant to Ohio Civil Rule 38(B)

1. (1981) The requirement that the phrase "jury demand endorsed hereon" appear in the caption of the pleading in the amendment of Civ. R. 38(B) was to help assure that a jury demand not be overlooked. Where there is ample notice before the scheduled trial that a jury has been demanded, the failure to place the notice of the jury demand in the caption is not prejudicial to the opposing party or to the court in its administrative practice.